

ORDINANCE NO. 2020-09

A SPECIAL ORDINANCE authorizing the City of Lafayette to issue up to \$8,000,000 aggregate principal amount of its City of Lafayette, Indiana Economic Development Revenue Bonds, Series 2020 (Briarwood of Lafayette Project) (the "Bonds") in one or more series and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, the Act provides that an issuer may, pursuant to the Act, issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of economic development facilities, for diversification of economic development and creation or retention of opportunities for gainful employment; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, a representative of Glick Briarwood Lafayette, LP, an Indiana limited partnership (the "Borrower") has requested that the City of Lafayette, Indiana (the "Issuer") issue bonds and lend the proceeds thereof to the Borrower in order to finance the acquisition, construction, renovation, improvement and equipping of a multifamily housing facility known as Briarwood of Lafayette Apartments, containing approximately 100 apartment units, together with functionally related and subordinate facilities such as parking areas, located at 1750 Windemere Drive, in Lafayette, Indiana and funding costs of issuance and any necessary reserves in connection therewith (the "Project"); and

WHEREAS, the Lafayette Economic Development Commission (the "Commission") has rendered a report concerning the proposed acquisition, construction, renovation, improvement and equipping of economic development facilities for the Borrower and the Area Plan Commission of the City of Lafayette, Indiana has been given the opportunity to comment thereon; and

WHEREAS, the Commission after a public hearing held on February 27, 2020, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") found that the acquisition, construction, renovation, improvement and equipping of the Project complies with the purposes and provisions of the Act, that such acquisition, construction, renovation, improvement and equipping will be of benefit to the health and welfare of the Issuer and its citizens through the requirement that the Project serve persons and families of low and moderate income, that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan; and

WHEREAS, the Commission has considered whether the acquisition, construction, renovation, improvement and equipping of the Project will have an adverse competitive effect or impact on any similar facility or facilities of the same kind already constructed or operating in the same market area or in or about Lafayette, Indiana; and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to acquire, construct, renovate, improve and equip the Project and to pay costs related to issuing the Bonds by issuing not to exceed \$8,000,000 aggregate principal amount of the Bonds; and

WHEREAS, the Issuer intends to issue the Bonds in one or more series pursuant to a Trust Indenture (the "Indenture"), by and between the Issuer and The Huntington National Bank (or a trustee selected by the Borrower, the "Trustee") in order to obtain funds to lend to the Borrower for the purpose of acquiring, renovating, improving and equipping the Project pursuant to a Loan Agreement with respect to the Bonds between the Issuer and the Borrower (the "Loan Agreement"), provided, however, that the aggregate principal amount of the Bonds shall not exceed \$8,000,000; and

WHEREAS, the Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the Bonds pursuant to which the Borrower will agree to make payments sufficient to pay the principal and interest on the Bonds as the same become due and payable and to pay administrative expenses in connection with the Bonds; and

WHEREAS, no member of the Common Council has any pecuniary interest in any employment, Loan Agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Common Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, there has been submitted to the Commission for its approval substantially final forms of the Indenture, Loan Agreement, Regulatory Agreement and Declaration of Restrictive Covenants, Bond Purchase Agreement, Preliminary Official Statement and the Bonds (hereinafter referred to collectively as the "Financing Documents") and this proposed form of ordinance which were incorporated by reference in the Commission's Resolution adopted on February 27, 2020, which Resolution has been transmitted hereto; and

WHEREAS, the Borrower has agreed after discussions with the Issuer to (a) increase rear lighting at the Project through installation of photocell dawn to dusk lighting on individual unit patios as previously recommended by the Issuer's police department, (b) replace existing parking lot and ornamental pole lighting with LED lighting and (c) add 4 cameras with recording and cloud storage access capability in locations reasonably acceptable to the Issuer's police department; and

WHEREAS, the Borrower will be liable for the debt described in the Loan Agreement; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the acquisition, construction, renovation, improvement and equipping of the Project, the Issuer hereby finds and determines that the funding approved by the Commission for the acquisition, construction, renovation, improvement and equipping of the Project will be of benefit to the health

and general welfare of the citizens of the Issuer, complies with the provisions of the Act and the amount necessary to finance the costs of the Project, will require the issuance, sale and delivery of one or more series of economic development revenue bonds in an aggregate combined principal amount not to exceed \$8,000,000; now, therefore:

**BE IT ORDAINED BY THE COMMON COUNCIL OF THE
CITY OF LAFAYETTE, INDIANA:**

SECTION 1. It is hereby found that the acquisition, construction, renovation, improvement and equipping of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, the loan of the net proceeds thereof to the Borrower for the purposes of acquiring, renovating, improving and equipping the Project, and the repayment of said loan by the Borrower will be of benefit to the health or general welfare of the Issuer and its citizens and does comply with the purposes and provisions of the Act, including in particular, the requirement of promoting a substantial likelihood of creating or retaining opportunities for gainful employment. Furthermore, it is hereby found that the acquisition, construction, renovation, improvement and equipping of the Project will further a public purpose of the Issuer through, among other things, the provision of quality, affordable, multifamily housing.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the Common Council or City Controller. In compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the Common Council for public inspection.

SECTION 3. The Issuer shall issue its Bonds in one or more series, as described above, in the aggregate principal amount not to exceed \$8,000,000, for the purpose of procuring funds to loan to the Borrower in order to finance the acquisition, construction, renovation, improvement and equipping of the Project which Bonds will be payable as to principal and interest solely from the payments made by the Borrower pursuant to the Financing Documents to evidence and secure said loan and as otherwise provided in the above-described Financing Documents. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Issuer.

SECTION 4. The Clerk is authorized and directed to sell such Bonds to the purchasers thereof at a price not less than 97% of the aggregate principal amount thereof (excluding any original issue premium or discount) plus accrued interest, if any, and at a fixed or initial variable rate of interest not to exceed 12% percent per annum. The Bonds will mature no later than 40 years from the date of their issuance, and shall be subject to optional redemption within 11 years of the date of issuance thereof at a price of 100% of the principal amount thereof.

SECTION 5. The Mayor and Clerk are authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and Clerk and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Issuer. The signatures of the Mayor and the Clerk on the Bonds may be necessary or desirable to consummate the transaction, and their execution is hereby

confirmed on behalf of the Issuer. The signatures of the Mayor and the Clerk on the Bonds may be facsimile signatures. The Clerk and City Controller are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and Clerk may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve changes therein and also in those Financing Documents which do not require the signature of the Mayor and/or Clerk without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Indiana Code Title 36, Article 7, Chapter 12, Section 27(a)(1) through (a)(10).

SECTION 6. The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Bonds and after the issuance of said Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 7. Subject to the obligations of the Borrower set forth in the Loan Agreement, the Regulatory Agreement and Declaration of Restrictive Covenants and the Tax Representation Certificate, the Issuer will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations promulgated thereunder. The Mayor and the Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and the regulations thereunder.

SECTION 8. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the Issuer upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement and the issuance, sale and delivery of the Bonds.

SECTION 9. The Borrower and its general partner will indemnify and hold the Issuer, including its officials, attorneys, employees and agents, free and harmless from any loss, claim,

damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, including the issuance and sale of the Bonds or failure to issue or sell the Bonds or other actions taken under the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, all as further described in the Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the Issuer.

SECTION 10. It is hereby determined that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Common Council has solely relied upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the Issuer as to the feasibility or viability of the Project. The Common Council hereby authorizes and directs the Clerk to review and make the foregoing determination again for and on behalf of the Issuer at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Indiana Housing and Community Development Authority ("IHCDA") and either written representations of the Borrower or of IHCDA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan. Such determinations shall occur on or about the date of the sale of the Bonds to the purchasers thereof and on or about the date that each building of the Project is placed in service. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan.

SECTION 11. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 12. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 13. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Common Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5 et seq., as amended.

SECTION 14. The Mayor and the Clerk are authorized to take all such further actions or to execute, attest and deliver such further instruments and documents in the name of the Issuer as in their judgment shall be necessary or advisable in order fully to consummate the transaction and carry out the purposes of this Ordinance.

SECTION 15. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code Title 36, Article 3, Chapter 4, Section 14.

* * * * *

The foregoing was passed by the Common Council this ____ day of _____, 2020, at
__:__ p.m.

ATTEST:

_____, Presiding Officer

Cindy Murray, Clerk

Presented by me to the Mayor this ____ day of _____, 2020, at __:__ .m.

Cindy Murray, Clerk

Approved and signed by me this ____ day of _____, 2020.

Tony Roswarski, Mayor

Sponsored by: Edward Chosnek, Corporation Counsel

STATE OF INDIANA)
) SS:
TIPPECANOE COUNTY)

I, Cindy Murray, Clerk of the Common Council, Lafayette, Tippecanoe County, Indiana, do hereby certify the above and foregoing is a full, true and complete copy of ORDINANCE NO. ____, 2020, an ORDINANCE, passed by the Common Council on the ____ day of _____, 2020, by a vote of ____ YEAS and ____ NAYS, which was signed by the Mayor on the ____ day of _____, 2020, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Lafayette, Indiana, this ____ day of _____, 2020.

(SEAL)

Cindy Murray, Clerk